IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/08/2002

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 12363 of 1995
and
W.M.P. No. 19715 of 1995

Swami Hariharananda
Secretary
School Committee
Vivekananda Hr.Sec. School
Thirupparaithurai
Trichy District ... Petitioner

-Vs-

1. Educational Appellate Tribunal
(Principal Subordinate Judge)
Tiruchirapalli

2. Joint Director of Schools
(Secondary Education)
Madras – 6

3. V. Krishnamurthy ... Respondents

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari as stated therein.

For Petitioner : Mr. A. Sankara Subramaniam

For Respondent : Mr. R. Rajasekaran, Government Advocate (Education) for RR1 & 2
No appearance for R3
:ORDER

The petitioner has filed the above petition seeking for a Writ of Certiorari o call for the records of the 2nd respondent in K.Dis.11279 G7/88 dated 23-11-1988 confirming the order of the 1st respondent dated 17-04-1995 in C.M.A. No. 2 of 1989 and quash the same.

2. Heard both sides. The petitioner herein issued a charge memo to the 3rd respondent herein, who was employed as Junior Assistant in the petitioner's school. After receipt of the charge memo, the 3rd respondent

submitted his explanation within the stipulated time. Thereafter, the 3rd respondent wrote a letter dated 07-02-1986 requesting Tamil translated version of the charge memo, which was also furnished to him on 05-03-1986. Even after receipt of the Tamil version of the charge memo, the 3rd respondent failed to submit his explanation till 07-04-1986 and he was placed under suspension with effect from 17-04-1986. The 3rd respondent submitted his explanation dated 10-04-19 86 which was received by the petitioner/Management on 19-04-1986. However, the 3rd respondent failed to appear for the enquiry conducted by the School Committee and it on 23-04-1986 based on the explanation of the 3rd respondent held the charges against the 3rd respondent as proved. Ultimately, the 3rd respondent was dismissed from the services. Thereafter, petitioner/Management sent a letter dated 04-05-198 6 to the Chief Educational Officer, requesting him to accord approval. It is also alleged by the petitioner that after several reminders, the Chief Educational Officer has passed orders in his proceedings R.C. No.15512 C2/86 dated 05-09-1986 rejecting the approval sought for by the petitioner. As against the order of the Chief Educational Officer, the petitioner/Management has filed an appeal before the Joint Director of School Education/2nd respondent herein. It is also alleged by the petitioenr that after several reminders, the Joint Director granted approval by his proceedings K.Dis. 356975 87 dated 27-01-19 88. After receipt of the permission from the Joint Director of School Education, the 3rd respondent was dismissed from his service by order dated 22-02-1988 with effect from 17-04-1986 namely the date in which he was placed under suspension.

3. The 3rd respondent has also filed an appeal before the 2nd respondent herein on 28-03-1988 and it after considering the evidence on record has dismissed the appeal on 23-11-1988 with a direction to the petitioner/Management to pay salary to the 3rd respondent for the period from 17-06-1986 to 21-02-1988.

4. Aggrieved by the said order, the Petitioner has filed an appeal before the 1st respondent/Tribunal. The 3rd respondent has also filed an appeal against the order of the 2nd respondent before the 1st Respondent to the extent which was adverse to him. The 1st respondent has taken both the appeals together namely Appeal Nos. 1 of 1989 and 2 of 1989 filed by the 3rd respondent and Petitioner respectively. The 1st respondent has found that inspite of opportunities afforded by the petitioner, the 3rd respondent has not appeared for the enquiry, hence, the order of dismissal passed by the Management was justified. Ultimately, the appeal preferred by the 3rd respondent herein in Appeal No. 1 of 1989 was dismissed. The 1st respondent also found that as per Section 22 (3) of Tamil Nadu Recognised Private School Regulations Act an employee cannot be placed under suspension for a period exceeding two months, if enquiry is not completed within the said two months nor the competent authority extended the period of suspension as such employee shall be deemed to have been restored in service. The Tribunal further held that the order of dismissal was passed by the Petitioner only on 22-02-1988 as such the 3rd respondent was entitled to salary for the period fro 17-06-1986 to 21-02-1988 and ultimately the appeal preferred by the Petitioner in Appeal No. 2 of 1989 was also dismissed by the 1st respondent. The present writ petition has been preferred by the petitioner against the order of the

Tribunal.

5. Now, we look into the relevant provisions of the Tamil Nadu Recognised Private School Regulations Act:-

"22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private Schools:-

(3)(a) No teacher or other persons employed in any private school shall be placed under suspension except when an enquiry into the gross misconduct, within the meaning of the Code of Conduct prescribed under sub-section (1) of Section 21, of such teacher or other person is contemplated.

(b) No such suspension shall remain in force for more than a period, of two months from the date of suspension and if such inquiry is not completed within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee;

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months for a further period not exceeding two months, if in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person."

6. Mr. Sankara Subramaniam, learned counsel appearing for the petitioner submitted that the dismissal order was passed as early as on 23-04-1986; that approval was belatedly granted by the authority namely 2nd respondent on 22-02-1988 as such it shall be deemed that approval taken effect from the date of order of dismissal. It is also argued by the learned counsel that Section 22 of the Act does not contemplate any prior permission from any authority to dismiss an employee.

7. The said arguments are untenable in law. In this case, the original authority has refused to grant approval by its order dated 05-09-1986. Thereafter, the petitioner herein has filed an appeal before the 2nd respondent herein, who has accorded approval to the order of termination. The intention of the legislature is that permission should be obtained before an order of termination or dismissal is passed. A close reading of the section makes it clear that there is no post-facto approval. Hence, the order passed by the 1st respondent directing the petitioner to pay arrears of salary to the 3rd respondent from 17-06-1986 to 21-02-1988 is perfectly in order as such, no interference is warranted.

In the result, the writ petition is dismissed. No costs. However, considering the circumstance of the case, there shall be no order as to costs. Connected WMP is also closed.

27-08-2002
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Index : Yes
Internet : Yes

To
1. Educational Appellate Tribunal
(Principal Subordinate Judge)
Tiruchirapalli

2. Joint Director of Schools
(Secondary Education)
Madras – 6
?IN THE HIGH COURT OF JUDICATURE AT MADRS

%DATED: 24/01/2002

*CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

+WRIT PETITION NO.1629 OF 1998
AND
W.M.P.NO.2322 OF 1998.

#A.Dhurvasala ... Petitioner

-Vs-

$1.The Collector,
Vellore District,
Vellore.

2.The Special Tahsildar,
Adi Dravidar Welfare,
Walajah,
Vellore District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of writ of Certiorari as stated therein.

!For petitioner : Mr.G.Jeremiah

^For respondents : Mr.M.Mahalingam, G.A.

:O R D E R

The above writ petition has been filed praying to issue a Writ
of Certiorari to call for the records of the first respondent pertaining to

the impugned notice published in the North Arcot Ambedkar District Gazette (Extraordinary), dated 14.3.1997 in respect of S.Nos.12/1, 1 2/2 and 402/2 situate at Sithambadi village, Arakonam Taluk, Vellore District and quash the same.

2. The case of the petitioner is that in Sithampadi village, there is a lake known as `Sithampadi Periya Eri', which is the source of irrigation for several hundreds of acres; that the lake water is carried through a channel in S.Nos.398,399 and 400 and when an attempt was made to obliterate the channel and convert it into a road, the petitioner objected the same and thereafter filed a writ petition in W.P. No.111 of 1996 before this Court and it is pending; that thereafter the 2nd respondent issued a notice in Form-I under Rule 3(1) stating that his lands along with certain other lands were required for the purpose of forming a link road to Sithampadi Mattu Colony, for which he submitted his objections, but, without giving any reply, suddenly, the second respondent issued a notice in Form-III to the petitioner on 8.1.1998.

3. Contending that without following the procedures established by law, the second respondent has issued the impugned notification under Section 4(1) of the Land Acquisition Act and further submitting that there is already a road linking the Harijan Colony and as such there was no need to form another road, the petitioner has come forward to file this Writ Petition.

4. During arguments, the learned counsel for the petitioner would submit that under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (Act 31/78), the District Collector or any officer authorised by him in this behalf will have to issue a notice to the owner of the land calling upon him to show-cause as to why it should not be acquired and such cause must be taken into account and orders will have to be passed, before a notification under Section 4(1) of the Act is issued. But, in the present case, the impugned notification has been issued without following the procedures established under the law and would cite a judgment of the Apex Court delivered in STATE OF TAMIL NADU vs. ANANTHI AMMAL reported in AIR 1995 SC 2114 wherein it has been held:

"Sub-sec.(1) of S.4 empowers the District Collector, if he is satisfied that it is necessary to acquire some land for the purpose of an Harijan Welfare Scheme, to acquire that land by publishing in the District Gazette a notice to the effect that he has decided to acquire it in pursuance of S.4. Sub-sec.(2) of S.4 obliges the District Collector or any Officer authorised by him in this behalf to call upon the owner or any other person who, in the opinion of the District Collector or the Officer so authorised, is interested in such land to show cause why it should not be acquired. By reason of sub-sec.(3) of S.4, such cause has to be taken into account and orders passed in respect thereof. It is only thereafter that the acquiring authority can arrive at the satisfaction that it is necessary to acquire the land. The provisions of S.4, therefore, substantially encapsulate the provisions of Ss.4 to 6 of the Land Acquisition Act, the only major difference being that, under the said Act, it is the District Collector and not the State Government (as under Land

Acquisition Act) who must be satisfied that the land is required to be acquired. It cannot be said that this is a provision which is unreasonable or arbitrary."

Further submitting that the respondents have not complied with the mandatory requirements prior to issuing the notification under Section 4(1) of the Act, the learned counsel for the petitioner would pray to allow the above writ petition.

5. It is Rule 3 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules 1979 (hereinafter called as 'Rules') which prescribes the procedure for acquiring the lands whereunder the show cause notice is to be issued in Form I and the notice to be published in District Gazette in Form II.

6. In order to analyse the implications and impact of this provisions of law, it is relevant to extract section 4(1), 4(2) and 4(3) of the Act and Rule 3 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules 1979.
"4. Power to acquire land:-
(1)Where the District Collector is satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section (1), the District Collector in his behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired.

3:(a): The District Collector may, where he has himself called upon the owner or other person to show cause under sub-section (2), pass such orders as he may deem fit on the cause so shown;

(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section(2), the officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report the District Collector may pass such orders as he may deem fit."

"Rule 3. Procedure for Acquiring Land:-
(i): The District Collector or the Officer authorised by him in this behalf shall serve a show cause notice in Form I under sub-section (2) of Section 4 individually on the owner or on all persons interested in the land to be acquired. If the owner or any other person interested in the land resides elsewhere than where the land is situated, the show cause notice shall be sent by registered post (Acknowledgment Due) to the last known address of the owner or any other person interested.

(ii): The District Collector, if, after passing such orders as required by

sub-sections (2) and (3) of Section 4 is satisfied that it is necessary to acquire the land, notice in Form II to that effect shall be published in the District Gazette."

7. Thus, the publication of Notification under Section 4(1) by which the Government declares its decision to acquire the particular land for the purpose of any Harijan Welfare Scheme is the base in the process of acquisition. Such publication of notification could only be done complying with the mandatory provisions of law as contemplated under Sections 4(2) and 4(3) of the Act, they being pre-requisites for effecting the publication of notification under Section 4(1) of the Act, lest, the very land acquisition proceeding initiated coupled with the publication of notification under Section 4(1) of the Act would get vitiated.

8. The next question that arises for consideration is as to how the requirements of Sections 4(2) and 4(3) of the Act should be complied with.

9. Section 4(2) of the Act would itself lay that before publishing the notice under Section 4(1) of the Act, the District Collector or any Officer authorised by the District Collector shall call upon the owner or person interested to show cause as to why his land should not be acquired.

10. The procedure as to how the above mentioned show-cause notice shall be served is laid down under Rule 3(1) of the Rules. It is mentioned therein that the said notice has to be issued in accordance with Form-I, sending the notice by registered post (acknowledgment due) to the last known address of the owner or any other person interested.

11. After compliance of Rule 3(i), under Rule 3(iii) of the said Rules, if the District Collector is satisfied that it is necessary to acquire the land, notice in Form-II to that effect shall be published in the District Gazette.

12. So far as the case in hand is concerned, the respondents are not able to produce records regarding compliance of procedures laid down under Section 4(2) of the Act itself, no mention need be necessary for the compliance of the mandatory provisions of Section 4(3)(b) of the Act and therefore the acquisition proceeding as initiated resulting in the publication of notification equally gets vitiated.

13. For all the discussions held above, the entire acquisition proceedings initiated in the above writ petition gets vitiated. However, the respondents are at liberty to initiate fresh proceedings of acquisition of the lands in question in the writ petitions if they so desire.

In result,

(i)The above writ petition is allowed;

(ii)The impugned notice published in the North Arcot Ambedkar District Gazette (Extraordinary) dated 14.3.1997 is quashed only in respect of the lands belonging to the petitioner in S.Nos.12/1, 12/2 and 402/2 of Sithambadi

Village, Arakkonam Taluk, Vellore District;
(iii)However, the respondents are at liberty to initiate fresh proceedings of acquisition of the same lands for the purpose mentioned therein strictly adhering the provision of law.
However, in the circumstances of the case, there shall be no order as to costs.
Consequently, connected W.M.P. is closed.

Index:Yes
Internet:Yes
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To
1.The Collector,
Vellore District,
Vellore.

2.The Special Tahsildar,
Adi Dravidar Welfare,
Walajah,
Vellore District.

Order in WP.1629/1998 and
WMP.No.2322 of 1998.